



DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-82,838

APRIA HEALTHCARE, LLC
BILLING DEPARTMENT
OVERLAND PARK, KANSAS

Notice of Revised Determination
on Remand

On February 28, 2014, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's (Department's) motion for voluntary remand for further investigation in Former Employees of Apria Healthcare, LLC, Billing Department, Overland Park, Kansas v. U.S. Secretary of Labor, Case No. 13-00409.

On June 24, 2013, the state workforce office filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers of Apria Healthcare, LLC (hereafter referred to as "the subject firm"), Billing Department, Overland Park Kansas (TA-W-82,838; hereafter referred to as "the Billing Department"), and Apria Healthcare, LLC, Document Imaging Department, Overland Park, Kansas (TA-W-82,838A; hereafter referred to as "the Document Imaging Department").

The initial investigation revealed that workers within the Billing Department were engaged in employment related to the supply of medical billing services; workers within the Document Imaging Department were engaged in employment related to the

supply of patient record management services; workers within the two different departments were separately identifiable by services performed and, therefore, were treated as separate subject worker groups; and a significant number or proportion of workers within each subject worker group were totally or partially separated from employment.

Although certification was granted for the Document Imaging Department under TA-W-82,838A, a negative determination was initially made regarding the Billing Department under TA-W-82,838. The Department determined that the subject firm acquired from a foreign country the supply of services like or directly competitive with those services provided by the workers within the Document Imaging Department. Consequently, workers within the Document Imaging Department were determined to be a group eligible to apply for TAA. The workers in the billing number, however, were not determined to be an eligible worker group. The negative determination issued under TA-W-82,838 was based on the Department's findings that the subject firm did not shift to, or acquire from, a foreign country the supply of services like or directly competitive with those supplied by the workers within the Billing Department and that the subject firm did not import services like or directly competitive services with those supplied by the workers within the Billing Department.

The negative determination regarding workers' eligibility to apply for TAA under TA-W-82,838 was issued on September 5, 2013. The Department's Notice of determinations was published in the Federal Register on October 3, 2013 (78 FR 61392).

By application dated September 19, 2013, a worker in the Billing Department requested administrative reconsideration of the Department's negative determination regarding TA-W-82,838. The request for reconsideration alleged that the separated worker "did the N and K report which was electronic rejections from India and my job was to tell them how to get the claim to go through. Lots of times the claims had to be dropped onshore (meaning United States) . . . I do have documentation and emails . . . to support my facts." Following the receipt of the request for reconsideration, the Department received several electronic messages (emails) from the separated worker, which included emails from Apria management to the worker, an explanation of the worker's responsibilities, and the assertion that separations were due to outsourcing to "Emdeon and India."

The Department carefully reviewed the information provided by the worker seeking reconsideration, previously-submitted information, and information regarding Emdeon, and determined that the request for reconsideration did not supply facts not previously considered and did not provide additional documentation indicating that there was either: 1) a mistake in

the determination of facts not previously considered or 2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

The Department issued a Notice of Negative Determination Regarding Application for Reconsideration on November 12, 2013. The Department's Notice of determination was published in the Federal Register on November 26, 2013 (78 FR 70580).

In the complaint filed with the USCIT, dated December 20, 2013, the plaintiffs allege that the subject firm has acquired from a foreign country the supply of services like or directly competitive with those supplied by the workers of the Billing Department and identified specific functions within the Billing Department's scope of work that had been shifted to a third party firm in a foreign country. New information was provided in the Complaint which had not previously been shared with the Department during the initial investigation or in the request for reconsideration. Based on a consideration of this new information, the Department determined that a voluntary remand should be requested in order to evaluate this material. The parties agreed to a voluntary remand for the Department to "seek clarification from plaintiffs regarding the relevance of the documents to their specific allegations and request that the

subject firm address the contents of the documents." Consent Motion at 3.

To apply for worker adjustment assistance under the requirements of the Act in effect for a petition filed on the date this petition was filed, June 24, 2013, Section 222(a), 19 U.S.C. § 2272(a), provided that the following criteria must be met:

- I. The first criterion (set forth in section 222(a)(1) of the Act, 19 U.S.C. § 2272(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.
- II. The second criterion (set forth in section 222(a)(2) of the Act, 19 U.S.C. § 2272(a)(2)) may be satisfied if either:
 - (i)(I) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; OR
 - (i)(II) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.
- III. The third criterion requires that the shift/acquisition must have contributed importantly to the workers' separation or threat of separation. See section 222(a)(2)(B)(ii) of the Act, 19 U.S.C. § 2272(a)(2)(B)(ii).

During the remand investigation, the Department obtained new information from the subject firm regarding the allegations in the Complaint, solicited input from the Plaintiffs via their counsel, and addressed the Plaintiffs' allegations regarding a

shift in the supply of Billing Department services to a foreign country by the subject firm.

Based on the new and additional information collected during the remand investigation from the subject firm in response to the new information provided in the Complaint, the Department determined that an acquisition by the subject firm from a foreign country of services like or directly competitive with the medical billing and related services supplied by the Billing Department was an important cause of the layoffs in the Billing Department, as described below.

During the remand investigation, the subject firm provided the Department with new information which revealed that, years prior to separations at the Billing Department, the subject firm had acquired from a foreign country a portion of the services like or directly competitive with those provided by the Billing Department and had continued to migrate more than a de minimus portion of the services following the initial acquisition of services.

Following a review of previously-submitted information and the new information collected in the remand investigation, the Department confirms that a significant number or proportion of the workers in the Billing Department was totally or partially separated. A significant number or proportion of the workers

means at least five percent of the subject firm, or appropriate subdivision thereof, of the workers or fifty workers (whichever is fewer) or at least three workers in a workforce of fewer than fifty workers. 29 CFR 90.2

In addition, the Department has determined that the subject firm's acquisition from a foreign country of a portion of services like or directly competitive with the services provided by the workers within the Billing Department contributed importantly to the afore-mentioned worker group separations. Contributed importantly means the cause (action or condition) is one "which is important but not necessarily more important than any other cause." 29 CFR 90.16(b)(3)

Consequently, the Department determines that, with regard to workers within the Billing Department, the group eligibility requirements under Section 222(a)(2)(B) of the Trade Act of 1974, as amended, that were in effect for TA-W-82,838, have been met.

Conclusion

After careful review of the facts obtained during the remand investigations, I determine that the workers' firm has acquired from a foreign country a portion of services like or directly competitive with those supplied by the Billing Department, and the acquisition of such services contributed

importantly to worker group separations at the Billing Department. In accordance with section 223 of the Act, 19 U.S.C. § 2273, I make the following certification:

"All workers of Apria Healthcare, Billing Department, Overland Park, Kansas (TA-W-82,838), who became totally or partially separated from employment on or after June 20, 2012, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, D.C. this 27th day of June, 2014

DEL MIN AMY CHEN
Certifying Officer, Office of
Trade Adjustment Assistance
4510-FN-P

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